

AN ACT

relating to the consummation of sales for purposes of local sales and use taxes and to the reallocation of those taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 321.002, Tax Code, is amended to read as follows:

Sec. 321.002. DEFINITIONS. (a) In this chapter:

(1) "Additional municipal sales and use tax" means only the additional tax authorized by Section 321.101(b).

(2) "Municipality" includes any incorporated city, town, or village.

(3) "Place of business of the retailer" means an established outlet, office, or location operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year. A warehouse, storage yard, or manufacturing plant is not a "place of business of the retailer" unless at last three orders are received by the retailer during the calendar year at the warehouse, storage yard, or manufacturing plant. An outlet, office, facility, or any location that contracts with a retail or commercial business ~~[engaged in activities to which this chapter applies]~~ to process for that business invoices, purchase orders, ~~[or]~~ bills of lading, or other equivalent records onto which sales tax is added,

1 including an office operated for the purpose of buying and selling  
2 taxable goods to be used or consumed by the retail or commercial  
3 business, is not a "place of business of the retailer" if the  
4 comptroller determines that the outlet, office, facility, or  
5 location functions or exists to avoid the tax imposed by this  
6 chapter or to rebate a portion of the tax imposed by this chapter to  
7 the contracting business. Notwithstanding any other provision of  
8 this subdivision, a kiosk is not a "place of business of the  
9 retailer." In this subdivision, "kiosk" means a small stand-alone  
10 area or structure that:

11 (A) is used solely to display merchandise or to  
12 submit orders for taxable items from a data entry device, or both;

13 (B) is located entirely within a location that is  
14 a place of business of another retailer, such as a department store  
15 or shopping mall; and

16 (C) at which taxable items are not available for  
17 immediate delivery to a customer.

18 (b) Words used in this chapter and defined by Chapter 151  
19 have the meanings assigned by Chapter 151.

20 SECTION 2. Subchapter F, Chapter 321, Tax Code, is amended  
21 by adding Section 321.510 to read as follows:

22 Sec. 321.510. REALLOCATION OF MUNICIPAL OR LOCAL  
23 GOVERNMENTAL ENTITY TAX REVENUE. (a) In this section, "local  
24 governmental entity" includes any governmental entity created by  
25 the legislature that has a limited purpose or function, that has a  
26 defined or restricted geographic territory, and that is authorized  
27 by law to impose a local sales and use tax the imposition,

1 computation, administration, enforcement, and collection of which  
2 is governed by this chapter.

3 (b) This section applies only if:

4 (1) the comptroller:

5 (A) reallocates local tax revenue from a  
6 municipality or local governmental entity to another municipality  
7 or local governmental entity; or

8 (B) refunds local tax revenue that was previously  
9 allocated to a municipality or local governmental entity; and

10 (2) the amount the comptroller reallocates or refunds  
11 is at least equal to the lesser of:

12 (A) \$200,000;

13 (B) an amount equal to 10 percent of the revenue  
14 received by the municipality or local governmental entity under  
15 this chapter during the calendar year preceding the calendar year  
16 in which the reallocation or refund is made; or

17 (C) an amount that increases or decreases the  
18 amount of revenue the municipality or local governmental entity  
19 receives under this chapter during a calendar month by more than 15  
20 percent as compared to revenue received by the municipality or  
21 local governmental entity during the same month in any previous  
22 year.

23 (c) Subject to the criteria provided by this section, a  
24 municipality or local governmental entity may request a review of  
25 all available sales tax returns and reports in the comptroller's  
26 possession filed by not more than five individual taxpayers doing  
27 business in the municipality or local governmental entity that are

1 included and identified by the municipality or local governmental  
2 entity from the information received from the comptroller under  
3 Section 321.3022 and that relate to a reallocation or refund in an  
4 amount described by Subsection (b).

5 (d) The comptroller shall provide the returns and reports  
6 requested under Subsection (c) for review regardless of whether the  
7 information in the returns or reports is confidential under state  
8 law, including Sections 111.006 and 151.027.

9 (e) The provision of confidential information to a  
10 municipality or local governmental entity under this section does  
11 not affect the confidential nature of the information in the  
12 returns or reports. A municipality or local governmental entity  
13 shall use the information only in a manner that maintains the  
14 confidential nature of the information and may not disclose or  
15 release the information to the public.

16 (f) A municipality or local governmental entity must submit  
17 the request under Subsection (c) not later than the 90th day after  
18 the date the municipality or local governmental entity discovers a  
19 reallocation or refund described by Subsection (b).

20 (g) Not earlier than the 30th day or later than the 90th day  
21 after the date the comptroller receives a request under Subsection  
22 (c), the comptroller shall provide the requested returns and  
23 reports to the requesting municipality or local governmental entity  
24 for review.

25 (h) The comptroller may set and collect from a municipality  
26 or local governmental entity a reasonable fee to cover the expense  
27 of compiling and providing information under this section.

SECTION 3. Section 322.108(a), Tax Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the following apply to the taxes imposed by this chapter in the same manner as applicable to a municipality under Chapter 321:

- (1) Section 321.002(a)(3);
- (2) Section 321.003;
- (3) Section 321.203;
- (4) Section 321.205(d);
- (5) Section 321.208;
- (6) Section 321.209;
- (7) Section 321.303;
- (8) Section 321.304; ~~[and]~~
- (9) Section 321.305; and
- (10) Section 321.510.

SECTION 4. Subchapter F, Chapter 323, Tax Code, is amended by adding Section 323.510 to read as follows:

Sec. 323.510. REALLOCATION OF COUNTY OR LOCAL GOVERNMENTAL ENTITY TAX REVENUE. (a) In this section, "local governmental entity" includes any governmental entity created by the legislature that has a limited purpose or function, that has a defined or restricted geographic territory, and that is authorized by law to impose a local sales and use tax the imposition, computation, administration, enforcement, and collection of which is governed by this chapter.

(b) This section applies only if:

- (1) the comptroller:

1                   (A) reallocates local tax revenue from a county  
2 or local governmental entity to another county or local  
3 governmental entity; or

4                   (B) refunds local tax revenue that was previously  
5 allocated to a county or local governmental entity; and

6                   (2) the amount the comptroller reallocates or refunds  
7 is at least equal to the lesser of:

8                   (A) \$200,000;

9                   (B) an amount equal to 10 percent of the revenue  
10 received by the county or local governmental entity under this  
11 chapter during the calendar year preceding the calendar year in  
12 which the reallocation or refund is made; or

13                   (C) an amount that increases or decreases the  
14 amount of revenue the county or local governmental entity receives  
15 under this chapter during a calendar month by more than 15 percent  
16 as compared to revenue received by the county or local governmental  
17 entity during the same month in any previous year.

18                   (c) Subject to the criteria provided by this section, a  
19 county or local governmental entity may request a review of all  
20 available sales tax returns and reports in the comptroller's  
21 possession filed by not more than five individual taxpayers doing  
22 business in the county or local governmental entity that are  
23 included and identified by the county or local governmental entity  
24 from the information received from the comptroller under Section  
25 323.3022 and that relate to a reallocation or refund in an amount  
26 described by Subsection (b).

27                   (d) The comptroller shall provide the returns and reports

1 requested under Subsection (c) for review regardless of whether the  
2 information in the returns or reports is confidential under state  
3 law, including Sections 111.006 and 151.027.

4 (e) The provision of confidential information to a county or  
5 local governmental entity under this section does not affect the  
6 confidential nature of the information in the returns or reports. A  
7 county or local governmental entity shall use the information only  
8 in a manner that maintains the confidential nature of the  
9 information and may not disclose or release the information to the  
10 public.

11 (f) A county or local governmental entity must submit the  
12 request under Subsection (c) not later than the 90th day after the  
13 date the county or local governmental entity discovers a  
14 reallocation or refund described by Subsection (b).

15 (g) Not earlier than the 30th day or later than the 90th day  
16 after the date the comptroller receives a request under Subsection  
17 (c), the comptroller shall provide the requested returns and  
18 reports to the requesting county or local governmental entity for  
19 review.

20 (h) The comptroller may set and collect from a county or  
21 local governmental entity a reasonable fee to cover the expense of  
22 compiling and providing information under this section.

23 SECTION 5. Section 1 of this Act takes effect September 1,  
24 2011.

25 SECTION 6. This Act takes effect September 1, 2011.

H.B. No. 590

David Dewhurst

President of the Senate

Joe Straus

Speaker of the House

I certify that H.B. No. 590 was passed by the House on May 11, 2011, by the following vote: Yeas 149, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 590 on May 25, 2011, by the following vote: Yeas 142, Nays 0, 2 present, not voting.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 590 was passed by the Senate, with amendments, on May 20, 2011, by the following vote: Yeas 31, Nays 0.

Letsy Graw

Secretary of the Senate

APPROVED:

17 Jun '11

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
4:00 P.M. O'CLOCK

JUN 17 2011

John R. Edwards  
Secretary of State